

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

CARLOS DWIGHT POSEY,)

Plaintiff)

VS.

Case No. 2:08-cv-00401-AKK-HGD

CHARLES NEWFIELD,)

Defendant.)

MEMORANDUM OPINION

This is a civil action pursuant to 42 U.S.C. § 1983, filed by the plaintiff, Carlos Dwight Posey. In his *pro se* complaint, the plaintiff names as defendant Birmingham Police Officer Charles Newfield and alleges Newfield used excessive force against him during an arrest. The plaintiff seeks monetary and injunctive relief as compensation for the alleged constitutional violation.

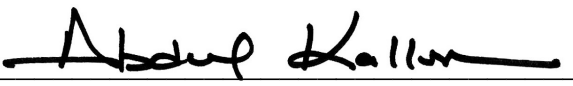
On January 26, 2010, the magistrate judge filed a Revised Report and Recommendation, recommending that defendant Newfield's motion for summary judgment be denied as genuine issues of material fact exist. Doc. 62. The parties were allowed fourteen (14) days to file objections to the recommendation made by

the magistrate judge. On January 27, 2009, the plaintiff filed a “response” in which he merely restates his claims. Doc. 63.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the magistrate judge’s Revised Report and Recommendation and the plaintiff’s response thereto, the court is of the opinion that the magistrate judge’s report is due to be and is hereby ADOPTED and the magistrate judge’s recommendation is ACCEPTED. The court EXPRESSLY FINDS that there are genuine issues of material facts with regard to the plaintiff’s Fourth Amendment excessive force claim against defendant Newfield. Therefore, Newfield’s motion for summary judgment is DENIED.

An appropriate order will be entered.

DONE this 12th day of March, 2010.


ABDUL K. KALLON
UNITED STATES DISTRICT JUDGE